



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/077,641   | 02/15/2002  | Kevin M. Messina     | INTCHK C1           | 6186             |
| 26345  | 7590        | 11/05/2004           | EXAMINER            |                  |
| GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE<br>1 RIVERFRONT PLAZA<br>NEWARK, NJ 07102-5497 |             |                      | HAYES, JOHN W       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3621                |                  |
| DATE MAILED: 11/05/2004  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/077,641

**Applicant(s)**

MESSINA, KEVIN M.

**Examiner**

John W Hayes

**Art Unit**

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 51-76 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 51-76 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/04.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Claims***

1. Applicant has canceled all claims of record (1-50) and added new claims 51-76 in the amendment filed 02 August 2004.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 51 and 64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 51, these claims recite "calculate an age in response to successful checking of values by instruction (c)" and "a display responsive to said processor and operable to display at least said calculated age and to indicate an unsuccessful check for conformance by instruction (c)". This language is not clear to the examiner since it appears that both a calculated age and an indication of an unsuccessful check are displayed. However, since the calculated age is in response to a "successful" check, its not clear why there would be an indication of an "unsuccessful" check for conformance. In other words, its not clear why an unsuccessful check would be indicated when the age is calculated based upon a successful check.

With regard to claim 64, similar language is recited in this claim and is rejected for the same reason.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982);

Art Unit: 3621

*In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 51-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-11 of U.S. Patent No. 5,864,623 in view of Sharrard, U.S. Patent No. 5,722,526.

As per **Claims 51 and 64**, claims 10-11 of U.S. Patent No. 5,864,623 recite and apparatus for reading information from a driver license comprising:

- an information reader for reading machine readable information from a license
- a processor for executing instructions to
- determine an identifier corresponding to an issuing jurisdiction
- extract information such as date of birth
- checking the extracted information for conformance to predetermined values
- displaying a verification signal

Claims 10-11 of U.S. Patent No. 5,864,623, however, fail to explicitly recite calculating an age. Sharrard discloses a system for vending controlled products based on the age of the customer (Abstract) and further disclose reading birth date information from a magnetic stripe of a driver's license (Col. 2 line 60-Col. 3 line 2) and comparing this information with a predetermined value to determine if the user is of legal age (Col. 3 line 59-Col. 4 line 3). Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claims 10-11 and include calculating an age by comparing age information stored on the card with a predetermined value as taught by Sharrard in order to determine if the customer is of legal age to purchased age restricted products.

Claims 52-63 depend upon claim 51 and are rejected for the same reasons. Claims 65-76 depend upon claim 64 and are rejected for the same reasons.

Art Unit: 3621

6. Claims 51-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 and 13 of U.S. Patent No. 6,463,416 in view of Sharrard, U.S. Patent No. 5,722,526

As per **Claims 51 and 64**, claims 10-11 of U.S. Patent No. 5,864,623 recite and apparatus for reading information from a driver license comprising:

- an information reader for reading machine readable information from a license
- a processor for executing instructions to
- determine an identifier corresponding to an issuing jurisdiction
- extract information such as date of birth
- checking the extracted information for conformance to predetermined values
- displaying a verification signal

Claims 6 and 13 of U.S. Patent No. 6,463,416, however, fail to explicitly recite calculating an age. Sharrard discloses a system for vending controlled products based on the age of the customer (Abstract) and further disclose reading birth date information from a magnetic stripe of a driver's license (Col. 2 line 60-Col. 3 line 2) and comparing this information with a predetermined value to determine if the user is of legal age (Col. 3 line 59-Col. 4 line 3). Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claims 6 and 13 and include calculating an age by comparing age information stored on the card with a predetermined value as taught by Sharrard in order to determine if the customer is of legal age to purchased age restricted products.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date

Art Unit: 3621

of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3621

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hayes whose telephone number is (703)306-5447. The examiner can normally be reached Monday through Friday from 5:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

**Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

Please address mail to be delivered by other delivery services (Federal Express (Fed Ex), UPS, DHL, Laser, Action, Purolator, etc.) as follows:

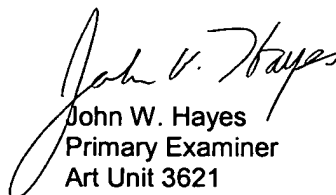
**U.S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window, Mail Stop \_\_\_\_\_  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, Virginia 22202**

or faxed to:

**(703) 872-9306** [Official communications; including  
After Final communications labeled  
"Box AF"]

**(703) 746-5531** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington,  
VA, 7<sup>th</sup> floor receptionist.

  
John W. Hayes  
Primary Examiner  
Art Unit 3621

November 2, 2004